

Department of Justice

§ 60.1

gives advance notice of the government's interest in obtaining the materials would be likely to result in the destruction, alteration, concealment, or transfer of the materials sought; considerations, among others, bearing on this issue may include:

- (i) Whether a suspect has access to the materials sought;
- (ii) Whether there is a close relationship of friendship, loyalty, or sympathy between the possessor of the materials and a suspect;
- (iii) Whether the possessor of the materials is under the domination or control of a suspect;
- (iv) Whether the possessor of the materials has an interest in preventing the disclosure of the materials to the government;
- (v) Whether the possessor's willingness to comply with a subpoena or request by the government would be likely to subject him to intimidation or threats of reprisal;
- (vi) Whether the possessor of the materials has previously acted to obstruct a criminal investigation or judicial proceeding or refused to comply with or acted in defiance of court orders; or
- (vii) Whether the possessor has expressed an intent to destroy, conceal, alter, or transfer the materials;

(2) The immediacy of the government's need to obtain the materials; considerations, among others, bearing on this issue may include:

- (i) Whether the immediate seizure of the materials is necessary to prevent injury to persons or property;
- (ii) Whether the prompt seizure of the materials is necessary to preserve their evidentiary value;
- (iii) Whether delay in obtaining the materials would significantly jeopardize an ongoing investigation or prosecution; or
- (iv) Whether a legally enforceable form of process, other than a search warrant, is reasonably available as a means of obtaining the materials.

The fact that the disinterested third party possessing the materials may have grounds to challenge a subpoena or other legal process is not in itself a legitimate basis for the use of a search warrant.

§ 59.5 Functions and authorities of the Deputy Assistant Attorneys General.

The functions and authorities of the Deputy Assistant Attorneys General set out in this part may at any time be exercised by an Assistant Attorney General, the Associate Attorney General, the Deputy Attorney General, or the Attorney General.

§ 59.6 Sanctions.

(a) Any federal officer or employee violating the guidelines set forth in this part shall be subject to appropriate disciplinary action by the agency or department by which he is employed.

(b) Pursuant to section 202 of the Privacy Protection Act of 1980 (sec. 202, Pub. L. 96-440, 94 Stat. 1879 (42 U.S.C. 2000aa-12)), an issue relating to the compliance, or the failure to comply, with the guidelines set forth in this part may not be litigated, and a court may not entertain such an issue as the basis for the suppression or exclusion of evidence.

PART 60—AUTHORIZATION OF FEDERAL LAW ENFORCEMENT OFFICERS TO REQUEST THE ISSUANCE OF A SEARCH WARRANT

Sec.

60.1 Purpose.

60.2 Authorized categories.

60.3 Agencies with authorized personnel.

AUTHORITY: Rule 41(h), Fed. R. Crim. P. (18 U.S.C. appendix).

§ 60.1 Purpose.

This regulation authorizes certain categories of federal law enforcement officers to request the issuance of search warrants under Rule 41, Fed. R. Crim. P., and lists the agencies whose officers are so authorized. Rule 41(a) provides in part that a search warrant may be issued "upon the request of a federal law enforcement officer," and defines that term in Rule 41(h) as "any government agent, * * * who is engaged in the enforcement of the criminal laws and is within the category of officers authorized by the Attorney General to request the issuance of a search